

# HOUSE . . . . . No. 3806

---

By Mr. Dempsey of Haverhill, for the committee on Ways and Means, that the Bill relative to co-operative banks (House, No. 1202) ought to pass with an amendment substituting a bill with the same title (House, No. 3806). November 14, 2011.

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand Eleven  
\_\_\_\_\_

An Act relative to co-operative banks.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 26 of chapter 170 of the General Laws, as appearing in the 2010 Official  
2 Edition, is hereby amended by striking out, in line 5, the word “co-operative”.

3 SECTION 2. Chapter 170 of the General Laws is hereby amended by striking out section 29, as  
4 so appearing, and inserting in place thereof the following section:

5 Section 29. Any federal thrift bank may convert itself into a co-operative bank upon the same  
6 terms and conditions that from time to time shall apply under federal law and regulations to the  
7 conversion of a co-operative bank to a federal thrift bank; provided, however, that where  
8 authority is conferred upon the appropriate federal supervising authority, in the case of a  
9 conversion from a co-operative bank to a federal thrift bank, similar authority, in the case of a  
10 conversion from a federal thrift bank to a co-operative bank, unless otherwise expressly provided  
11 in this section, is hereby conferred upon the commissioner. For purposes of this section, a federal

thrift bank shall mean a federally chartered savings bank, savings and loan association or successor thrift institution chartered under the laws of the United States.

Any such federal thrift bank shall first give notice in writing to the commissioner of its intention to convert to a co-operative bank and shall submit such preliminary financial statements and other information concerning its assets, liabilities and affairs as the commissioner may request, together with a plan for proposed conversion showing the intended treatment of the various classes of its assets and liabilities before and after conversion. The commissioner, at the expense of the federal thrift bank, shall make such examination of its assets, liabilities and affairs as the commissioner may deem advisable in order to determine the qualifications of such federal thrift bank for doing the business of a co-operative bank.

The commissioner may establish the procedure to be followed by any such federal thrift bank converting into a co-operative bank; provided, however, that no such conversion shall become effective unless approved in writing by the commissioner. The commissioner shall not grant such approval until he has received notice from the Share Insurance Fund of The Co-operative Central Bank established pursuant to chapter 73 of the acts of 1934, hereinafter called the central bank, that arrangements satisfactory to it have been made for such conversion.

If an application for conversion is approved by the commissioner as above provided, such federal thrift bank shall cause to be filed with the state secretary the name, residence and post-office address of each of the officers and directors of such federal thrift bank, a copy of its proposed by-laws amended to conform with the requirements of section 7 and such other information as said secretary may require.

33 After approval of such conversion by the commissioner, and receipt by him of satisfactory  
34 evidence that all provisions of federal laws and regulations relative to such conversion have been  
35 or will be duly complied with, the commissioner shall cause to be filed with the state secretary a  
36 certificate of his approval. After receipt of such certificate by said state secretary, if he finds that  
37 the requirements of this section have been satisfactorily complied with, he shall so certify and  
38 upon receipt of a fee, the amount of which shall be determined annually by the secretary of  
39 administration and finance under the provision of section 3B of chapter 7, said secretary shall  
40 issue to said officers and directors in such form as he may prescribe, a certificate of  
41 incorporation as a co-operative bank.

42 Simultaneously with the receipt of such certificate such bank, hereinafter referred to as the  
43 succeeding corporation, shall become a member of the central bank and of the Share Insurance  
44 Fund thereof. Before such succeeding corporation shall commence business as a co-operative  
45 bank, it shall pay into the reserve fund of the central bank, established pursuant to chapter 45 of  
46 the acts of 1932, an amount equal to the deposit required of a member bank thereof of similar  
47 size, as of the date of said certificate, plus such additional amount based upon the surplus of said  
48 reserve fund, as the directors of the central bank, with the approval of the commissioner, shall  
49 determine to be equitable.

50 In addition to the payment to said reserve fund, the succeeding corporation shall pay to said  
51 share insurance fund or make provision for payment thereto of such a sum as the directors of the  
52 central bank, with the approval of the commissioner, shall determine to be equitable; and  
53 provided, that the succeeding corporation shall pay to said share insurance fund such proportion  
54 of any current annual assessment as shall have accrued to the date of said certificate.

After compliance with the foregoing requirements, the succeeding corporation shall thereafter be entitled to exercise all of the rights and privileges and shall be subject to all of the duties and obligations of a co-operative bank and shall conduct its business subject to the provisions of this chapter and of other applicable laws; provided that, with the approval of the commissioner, the succeeding corporation shall have reasonable time after the effective date of the conversion within which to comply with any particular provisions of such laws not hereinbefore specifically provided for and which it shall be unable to comply with on or before said date.

SECTION 3. Section 1 of chapter 45 of the acts of 1932 is hereby amended by striking out the first paragraph, as appearing in section 2 of chapter 323 of the acts of 1956, and inserting in place thereof the following paragraph:-

All the co-operative banks established under the laws of the commonwealth and subject to the provisions of chapter 170 of the General Laws, hereinafter referred to as member banks, are hereby constituted a corporation under the name of the Co-operative Central Bank, hereinafter referred to as the central bank, to promote the elasticity and flexibility of the resources of the co-operative banks of the commonwealth by centralizing their reserve funds, to assist such member banks by providing financial or technical assistance, or holding investments which cannot readily be liquidated, by making loans to them secured by the pledge of mortgages or other securities legally held by such member banks. Any co-operative bank hereafter established under the authority of said 170 shall upon its organization become a member bank. The assets of the central bank shall be divided into 2 separate and distinct funds, as follows: (a) the Reserve Fund, which shall consist of all assessments collected under section 6, as amended, and all investments thereof and all income thereon; and (b) the Share Insurance Fund, established by chapter 73 of the acts of 1934, as amended.

78 SECTION 4. The second paragraph of said section 1 of said chapter 45, as appearing in section  
79 10 of chapter 405 of the acts of 1985, is hereby amended by striking out the words “; provided,  
80 however, that within thirty days of the vote of the corporation to dissolve and liquidate the Share  
81 Insurance Fund, declared eligible for distribution, in accordance with section nine of said chapter  
82 seventy-three, and prior to any distribution to member banks, an excise of five million dollars  
83 shall be paid by the corporation to the commissioner of revenue as an excise for the privilege of  
84 dissolving and liquidating said fund in whole or in part. No such excise shall be paid for such  
85 privilege subsequent to the initial distribution made in accordance with said section nine. After  
86 payment of such excise, the balance of the proceeds declared eligible for distribution shall be  
87 distributed in accordance with said section nine. Such excise shall be subject to all other relevant  
88 provisions of applicable law consistent with the provisions of this section; provided, however,  
89 that the application of such relevant provisions shall in no way diminish the amount of such  
90 excise. The revenues received by the commonwealth from the excise imposed by this section  
91 shall be placed in a separate fund to be applied solely to defray the cost of the purposes set forth  
92 in chapter twenty-one E of the General Laws”.

93 SECTION 5. Said section 1 of said chapter 45, as most recently amended by said section 10 of  
94 said chapter 405, is hereby further amended by inserting after the second paragraph the following  
95 paragraph:-

96 The term federal deposit insurance agency as used in this act shall mean Federal Deposit  
97 Insurance Corporation or any successor to such corporation.

98 SECTION 6. The first paragraph of section 2 of said chapter 45, as appearing in section 1 of  
99 chapter 176 of the acts of 1984, is hereby amended by striking out the first sentence and inserting

100 in place thereof the following sentence:- There shall be a board of directors of the central bank  
101 consisting of no fewer than 9 directors but no more than 15 directors, who shall be elected by the  
102 member banks in the manner hereinafter provided for terms of 3 years except in the case of  
103 vacancies.

104 SECTION 7. The sixth sentence of the first paragraph of said section 2 of said chapter 45, as so  
105 appearing, is hereby amended by striking out the words “eleven members” and inserting in place  
106 thereof the following words:- a majority of the directors.

107 SECTION 8. Subsection (a) of said section 2 of said chapter 45, as appearing in section 11 of  
108 chapter 405 of the acts of 1985, is hereby amended by striking out the word “fifteen” and  
109 inserting in place thereof the following words:- no fewer than 7 directors but no more than 12.

110 SECTION 9. Subsection (b) of said section 2 of said chapter 45, as appearing in section 1 of  
111 chapter 176 of the acts of 1984, is hereby amended by striking out the first sentence and inserting  
112 in place thereof the following sentence:- The delegates of the member banks shall elect from a  
113 list of persons nominated by such banks a number of directors equal to one-fifth the total number  
114 of directors serving on the board, rounded up to the nearest whole number, but which shall be not  
115 less than 2, none of whom shall be directors, officers, employees or agents of a member bank or  
116 a director, trustee or other officer of any other financial institution.

117 SECTION 10. Chapter 45 of the acts of 1932 is hereby amended by striking out section 4, as  
118 most recently amended by chapter 271 of the acts of 1991, and inserting in place thereof the  
119 following section:-

120 Section 4. There shall be a president, a treasurer and a clerk of the central bank and such other  
121 officers and committees thereof as the board of directors may deem necessary, which officers

and committees shall be elected annually by the directors. The clerk of the central bank shall be clerk of the board of directors. The directors may fill any vacancies in said offices and committees until the next annual meeting. A person may serve in more than one office.

SECTION 11. The first sentence of section 6 of said chapter 45, as most recently amended by section 79 of chapter 371 of the acts of 1983, is hereby further amended by striking out the words “a total of not more than seventy-five per cent of such reserve as such member bank is required to establish and maintain under section twenty-two of said chapter one hundred and seventy of the General Laws, computed on the basis of its total assets as appearing in its last preceding annual report to the commissioner” and inserting in place thereof the following words:- such amount as the directors may determine with the approval of the commissioner.

SECTION 12. Section 6 of said chapter 45, as most recently amended by section 1 of chapter 366 of the acts of 1971, is hereby further amended by striking out the third sentence and inserting in place thereof the following sentence:- The said directors may at any time call for such proportion of the maximum deposits authorized to be required hereby as they may deem necessary; provided, that no member bank shall at any time be required to have on deposit with the central bank an amount equal to more than  $2\frac{1}{4}$  per cent of such member bank’s total assets as shown annually by the list referred to in section 10.

SECTION 13. The first sentence of the first paragraph of section 7 of said chapter 45 is hereby amended by striking out the word “shareholders” and inserting in place thereof the following word:- depositors.

142 SECTION 14. Said section 7 of said chapter 45, as most recently amended by section 1 of  
143 chapter 116 of the acts of 1994, is hereby further amended by striking out the third paragraph and  
144 inserting in place thereof the following 2 paragraphs:-

145 The central bank may by a vote of its directors borrow money and pledge its assets as security  
146 therefor.

147 The funds of the central bank may be invested only in (a) Bankers' acceptances and bills of  
148 exchange of the kinds and maturities made eligible by law for rediscount with federal reserve  
149 banks, provided that the same are accepted by a bank, banking association or trust company  
150 incorporated under the laws of the United States or of this commonwealth; (b) Obligations of the  
151 United States and federal agency obligations; (c) Obligations of the commonwealth; (d) Loans to  
152 member banks; such loans to be in such amounts and subject to such conditions as the directors  
153 may determine; and (e) Deposits in member banks, national banks and in trust companies  
154 established under the laws of this commonwealth.

155 SECTION 15. The first paragraph of section 10 of said chapter 45, as most recently amended by  
156 section 81 of chapter 371 of the acts of 1983, is hereby further amended by inserting after the  
157 first sentence the following sentence:- In lieu of providing such list, the commissioner may  
158 notify the central bank that the information required in such list is available to the central bank  
159 from a source maintained by the commissioner or a federal deposit insurance agency.

160 SECTION 16. Said chapter 45 is hereby further amended by inserting after section 12 the  
161 following section:-

162 Section 13. The central bank shall have the authority to indemnify its directors, officers,  
163 employees and other agents to whatever extent specified in or authorized by a by-law adopted



164 pursuant to law. Such indemnification may include payment by the central bank of expenses  
165 incurred in defending a civil or criminal action or proceeding in advance of the final disposition  
166 of such action or proceeding upon receipt of an undertaking by the person indemnified to repay  
167 such payment if he shall be adjudicated to be not entitled to indemnification under this section  
168 which undertaking may be accepted without reference to the financial ability of such person to  
169 make repayment. Any such indemnification may be provided although the person to be  
170 indemnified is no longer an officer, director, trustee, employee or agent of the central bank.

171 No indemnification shall be provided for any person with respect to any matter as to which he  
172 shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable  
173 belief that his action was in the best interests of the central bank.

174 The central bank shall have power to purchase and maintain insurance on behalf of any person  
175 who is or was a director, officer, employee or other agent of the central bank, against any  
176 liability incurred by him in any such capacity, or arising out of his status as such, whether or not  
177 the central bank would have the power to indemnify him against such liability.

178 SECTION 17. Chapter 73 of the acts of 1934 is hereby amended by striking out section 1, as  
179 most recently amended by section 23 of chapter 405 of the acts of 1985, and inserting in place  
180 thereof the following section:-

181 Section 1. The Co-operative Central Bank, established by chapter 45 of the acts of 1932  
182 hereinafter referred to as the central bank, shall in the manner herein provided establish a fund  
183 for the insurance of shares in co-operative banks established under the laws of the  
184 commonwealth, hereinafter referred to as member banks. For such purpose, in addition to the  
185 assessments hereinafter provided for, the directors of the central bank may, by assessments made

186 from time to time upon the member banks determined in accordance with section 16 hereof,  
187 require each member bank to pay over in cash to the central bank a total of not more than 1 per  
188 cent of the deposits of such member bank as shown by its last preceding annual report to the  
189 commissioner of banks, hereinafter referred to as the commissioner, or as shown on the records  
190 of the federal deposit insurance agency, such assessments to be in addition to all other payments  
191 to the central bank required under said chapter 45. When and as determined by the board of  
192 directors of the central bank and approved by the commissioner, such bank shall pay to the  
193 central bank such assessment, if any, as authorized by the board of directors of the central bank  
194 and approved by the commissioner. If any member bank shall fail to pay any assessment lawfully  
195 required under this section, the treasurer of the central bank shall notify the commissioner of  
196 such failure and the commissioner shall forthwith notify such member bank in writing. The  
197 failure of such member bank to make such payment within 15 days after such notice from the  
198 commissioner shall constitute a violation of law within the meaning of section 12 of chapter 167  
199 of the General Laws. All assessments under this section and all payments under sections 28 and  
200 29 of chapter 170 of the General Laws shall be held as a fund to be known as the Share Insurance  
201 Fund and shall be in addition to all other payments to the central bank required under said  
202 chapter 45 and under said section 29 of said chapter 170. When the net fair value of the assets of  
203 said fund, as determined by the central bank and the commissioner, shall equal 3 per cent of the  
204 aggregate deposits of all member banks insured by the central bank no assessments shall be  
205 made, and if at any time or from time to time thereafter the net fair value of the assets of said  
206 fund as so determined shall fall below such 3 per cent, the payment of such assessments, as  
207 hereinbefore provided, shall be resumed and shall be continued until the net fair value of such  
208 assets as so determined again equals such 3 per cent. The Share Insurance Fund shall be invested

separately from the other funds of the central bank and shall not be liable for the obligations of the central bank other than those created by or under this act, as amended. Assets of the central bank not held in the Share Insurance Fund shall not be liable for any obligations created hereby or hereunder. All cost of administering the Share Insurance Fund shall be paid therefrom.

The term “federal deposit insurance agency” as used in this act shall mean Federal Deposit Insurance Corporation or any successor to such corporation.

SECTION 18. Chapter 73 of the acts of 1934 is hereby amended by striking out the first paragraph of section 1A, as appearing in section 2 of chapter 179 of the acts of 1980, and inserting in place thereof the following paragraph:- The directors from time to time may, to the extent which the commissioner deems desirable, review the financial condition of any member bank as it relates to deposit insurance, and shall report thereon to the commissioner with the recommendations of the directors. The commissioner may, upon request of the directors and notwithstanding the provisions of section 2 of chapter 167 of the General Laws, furnish to the directors for the purposes of the Share Insurance Fund, such factual information in his possession as the commissioner may deem to be of assistance in determining the financial condition of any member bank. The commissioner shall, to the extent permitted by federal law, furnish to the treasurer of the central bank 1 copy of the report of any examination of the books, securities, cash, assets and liabilities of any member bank made by the commissioner, pursuant to said section 2 of said chapter 167, in the form furnished to such bank as provided in said section 2. Every member bank shall furnish to the treasurer of the central bank 1 copy of any report or audit filed with the commissioner by such bank or caused by the commissioner to be made with respect to such bank, pursuant to section 14 of chapter 170 of the General Laws, in each case within 15 days after such report is filed with or otherwise furnished to the commissioner.

232 SECTION 19. The second paragraph of section 1A of chapter 73 of the acts of 1934, as  
233 appearing in section 2 of chapter 179 of the acts of 1980, is hereby amended by striking out the  
234 first sentence and inserting in place thereof the following sentence:- If the directors determine  
235 that a special examination and audit, including a current appraisal of the assets, of any member  
236 bank would be in the interests of its depositors or in the interests of the sound and effective  
237 operation of the Share Insurance Fund, the board of directors by vote of at least two-thirds of its  
238 members, may request the commissioner to cause such special examination, audit and appraisal  
239 to be made; and if the commissioner determines that the same to be advisable he shall cause the  
240 examination and audit to be made by a certified public accountant in such form and manner as  
241 the commissioner may prescribe, together with a current appraisal of such member bank's assets  
242 by a qualified person or persons, and the directors may furnish to the commissioner such  
243 evidence of current values of any or all of such member bank's assets as they may deem material  
244 to the appraisal.

245 SECTION 20. The second sentence of the third paragraph of said section 1A of said chapter 73 is  
246 hereby amended by striking out the word "corporation" and inserting in place thereof the  
247 following words:- central bank.

248 SECTION 21. Section 3 of said chapter 73 is hereby amended by striking out the first paragraph,  
249 as most recently amended by section 2 of chapter 116 of the acts of 1994, and inserting in place  
250 thereof the following paragraph:-

251 The central bank may pay dividends to member banks and at such times as the directors may  
252 determine, subject to the prior approval of the commissioner of any such payment, rates and  
253 times and subject to his prior approval as to the terms, conditions and use of such payments to

member banks, upon the amounts paid in by such banks to the Share Insurance Fund. The Fund may be invested by the central bank only as provided in subsections (a), (b), (c) and (e) of section 7 of chapter 45 of the acts of 1932, as amended, on such terms and conditions and at such valuations as the directors may determine. The central bank may by vote of its directors borrow money for the purposes of the Share Insurance Fund and pledge any assets in which such fund is invested as security for such loans.

SECTION 22. The second paragraph of section 3 of chapter 73 of the acts of 1934, as amended by section 23A of chapter 405 of the acts of 1985, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- In the case of a merger or consolidation of a co-operative bank with one or more other co-operative banks under section 25 of chapter 170 of the General Laws, or in the case of a sale of assets of such bank to and the assumption of the liabilities by one or more other co-operative banks under section 7 of this chapter or under section 24 of said chapter 170, the continuing bank shall succeed to any of the rights of the discontinuing bank in the assessments theretofore paid by the discontinuing bank; provided, however, that if the continuing bank is, and the discontinuing bank is not, a member of the federal deposit insurance agency the provisions of section 14 shall apply to such assessments of the discontinuing bank as though such bank had become a member of a federal deposit insurance agency as provided in sections 11 to 14, inclusive.

SECTION 23. The second paragraph of said section 3 of said chapter 73, as so appearing, is hereby further amended by striking out the second sentence.

SECTION 24. Said chapter 73 is hereby further amended by striking out section 3A, as most recently amended by section 12 of chapter 507 of the acts of 1980, and inserting in place thereof the following section:-

Section 3A. Whenever it shall appear to the commissioner that it is inadvisable or inexpedient for any member bank to continue to transact the business for which it is organized without receiving financial assistance as provided in this section, he may, in his discretion, so notify the central bank, and thereupon, if in the judgment of the directors of the central bank such action may reduce the risk or avert a threatened loss to the central bank, or may facilitate a merger or consolidation of such member bank with another member bank, or may facilitate the sale of the assets of such member bank to and the assumption of its liabilities by one or more other member banks, the central bank may, with the approval of the commissioner and in order to effect the purposes of this act, do any one or more of the following: (a) purchase from such member bank the whole or any part of, or any equitable or other interest in, its assets at the book value thereof, or at some other value mutually agreed upon by such member bank and said directors, notwithstanding that either of such values may exceed the market value of the assets so purchased, and upon such terms and conditions as said directors, with the approval of the commissioner, may determine; (b) make loans to such member bank, secured in whole or in part, in such amounts, and upon such terms and conditions, as said directors, with the approval of the commissioner, may determine; (c) pay to such member bank in accordance with an agreement entered into between such member bank and the central bank, with the approval of the commissioner, an amount not in excess of the difference between the book value of certain or all its assets and the fair value thereof as determined by said agreement, in consideration for which such member bank shall agree to write down such assets to such fair value and to pay over to the

central bank so much of any net proceeds realized from the sale or other disposition of each and all such assets as is in excess of such fair value, such payment to be made in such amounts, at such times and upon such terms and conditions as said directors, with the approval of the commissioner, may determine; provided, that any amount paid by the central bank hereunder to such member bank and the agreement of such member bank to repay the excess, as hereinbefore provided, shall constitute liabilities of such member bank only to the extent of any such excess from time to time actually realized; (d) pay into the surplus account of such member bank in accordance with an agreement entered into between such member bank and the central bank, with the approval of the commissioner, an amount not in excess of the difference between the book value of certain or all its assets and the fair value thereof as determined by said agreement, such member bank being hereby authorized and empowered, notwithstanding any other provision of law, to repay such amount to the central bank at such time or times and in such manner as such agreement may prescribe; provided, that any such payment made by the central bank to such member bank, and any agreement of such member bank to repay the same, shall constitute liabilities of such member bank only to the extent provided by said agreement; (e) make a deposit in such bank of such amount as the directors deem advisable which deposit shall not be subject to limits imposed by section 3 of chapter 176D of the General Laws or by the by-laws of the bank, and which may or may not be a subordinated deposit and may or may not be in accordance with an agreement that dividends thereon will be at a lower rate than is paid to other depositors; (f) assume any liabilities of such member bank; (g) make loans or contributions to or deposits in, or purchase any assets of, any financial institution which will acquire control of or merge or consolidate with such member bank or will purchase the assets and assume the liabilities of such member bank; (h) guarantee such member bank, or any financial institution

320 which will acquire control of or merge or consolidate with such member bank or will purchase  
321 the assets and assume the liabilities of such member bank, against loss by reason of such  
322 acquisition of control, merger or consolidation or purchase of assets and assumption of liabilities;  
323 and (i) take any other action which the directors in their opinion deem appropriate to carry out  
324 the purposes of this section.

325 In addition to or apart from the financial assistance authorized under the preceding paragraph,  
326 the central bank by vote of at least two-thirds of its directors and in order to effect the purposes  
327 of this act may, by agreement with a member bank and with the approval of the commissioner,  
328 grant financial assistance to such member bank by any or all of the methods prescribed and  
329 subject to the terms, conditions and benefits contained in clauses (a) to (i) inclusive, of this  
330 section, for any of the purposes stated in this section or for the purpose of providing reserve  
331 funds for the protection of depositors of such member bank; provided, that the total financial  
332 assistance granted to a member bank under the authority of this paragraph shall not at any one  
333 time exceed a sum equal to the greater of 5 per cent of the deposits of such bank or \$500,000.

334 Such bank, by vote of at least two thirds of its directors, may take any and all action necessary or  
335 advisable to enable it to carry out any or all provisions of this section.

336 Notwithstanding the provisions of section 27 of chapter 170 of the General Laws relative to  
337 voluntary dissolution and liquidation of a co-operative bank, in order to give effect to the  
338 purpose of this section and subject to the approval of the commissioner and of the central bank,  
339 such member bank may be dissolved and liquidate its affairs if authorized by vote of at least two-  
340 thirds of its directors; provided, that another depository institution, the deposits of which are  
341 insured by a federal deposit insurance agency, shall have assumed and agreed to pay the whole



342 of the deposits of such member bank under section 24 of said chapter 170. A liquidating  
343 committee of 3 persons, subject to the approval of the central bank, shall thereupon be elected by  
344 and from said directors, and, under such regulations as may be prescribed by the commissioner,  
345 shall liquidate the remaining assets, and after satisfying or adjusting all debts of and claims  
346 against such member bank not assumed by such other co-operative bank, shall distribute the  
347 remaining proceeds among those entitled thereto proportionate to their respective interests  
348 therein. The supreme judicial court, or any justice thereof, shall have jurisdiction in equity to  
349 enforce the provisions of this paragraph and to act upon all applications and in all proceedings  
350 thereunder.

351 At any time after 10 years from the date financial assistance shall have been granted to a member  
352 bank under any of the provisions of this section, any unpaid balance thereof may be  
353 compromised or settled for such cash payment or other consideration as the central bank and the  
354 member bank, with the approval of the commissioner, may agree upon, and upon such  
355 compromise or settlement the member bank shall be deemed to be released and discharged from  
356 any further obligation to repay the unpaid balance of such financial assistance except to the  
357 extent provided by such agreement. The supreme judicial court shall have jurisdiction in equity  
358 to approve any such agreement for compromise or settlement and to enforce the provisions of  
359 this paragraph and to act upon all applications and in all proceedings thereunder.

360 SECTION 25. Section 3B of chapter 73 of the acts of 1934 is hereby repealed.

361 SECTION 26. Said chapter 73 is hereby further amended by striking out section 4, as most  
362 recently amended by section 2 of chapter 72 of the acts of 1981, and inserting in place thereof  
363 the following section:-

Section 4. Whenever it shall appear to the commissioner that any member bank is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue to transact such business, he may so certify to the central bank, and upon receipt of such certificate the central bank shall, by notice in writing to the commissioner and to the bank, take possession and control forthwith of the property and business of such bank and shall operate such bank, subject to such rules and regulations as the commissioner may prescribe, until the bank shall be turned back to the member bank pursuant to section 5, be consolidated with or have its assets and liabilities sold to another financial institution, or until its affairs shall finally be liquidated. The central bank may, while thus carrying on such business, pay to such bank out of the Share Insurance Fund such sums as the central bank's directors deem necessary for the protection of the bank's depositors, and may order the same to be repaid when no longer required for that purpose, or may purchase assets from said bank to effect the purposes of this act on such terms and conditions and at such valuations as the directors, with the approval of the commissioner, may determine.

SECTION 27. Chapter 73 of the acts of 1934 is hereby amended by striking out section 5 and inserting in place thereof the following section:-

Section 5. At any time after the central bank has taken over the control, possession and operation of any member bank, as provided in section 4, the central bank may with the approval of the commissioner turn back the control, possession and operation thereof to such member bank which may resume business free from any control by the central bank acquired under section 4, subject to such conditions as the commissioner may approve. The central bank shall not thus turn back the control, possession and operation of any bank until there has been repaid into the Share

Insurance Fund all sums paid out by it from such fund to such bank or its depositors or until it has received security for such repayment satisfactory to the directors of the central bank.

SECTION 28. Said chapter 73 is hereby further amended by striking out section 6, as most recently amended by chapter 13 of the acts of 1982, and inserting in place thereof the following section:-

Section 6. The central bank, with the approval of the commissioner, may, and at the request of the commissioner shall, at any time after it has taken over the control, possession and operation of any member bank under section 4, discontinue the business of such bank and proceed to liquidate its affairs. The central bank shall in such event pay to the depositors of such bank, or make arrangements with the federal deposit insurance agency to pay, the full amount of their deposits at the date of the discontinuance of the business of the bank with interest from the last dividend date to the date of discontinuance at such rate as the directors shall determine, such payments to be made within 3 years from such discontinuance and at such times and in such installments as the directors with the approval of the commissioner shall determine. For such purpose the central bank shall use, in addition to the assets of the bank, such sums as may be required from the Share Insurance Fund. In case of liquidation the central bank shall be subject to such orders, rules and regulations as may be prescribed from time to time by the commissioner. The central bank shall collect all debts due and claims belonging to such bank and with the approval of the commissioner may sell or compound all bad or doubtful debts and with like approval may sell all or any part of the real or personal property of the bank on such terms as the commissioner may approve. To execute and perform the powers and duties conferred upon the central bank, it may in the name of any such bank prosecute and defend all suits and other legal proceedings and may in the name of the bank execute, acknowledge and deliver all deeds,

409 assignments, leases and other instruments necessary and proper to effectuate any sale of real or  
410 personal property or any compromise approved by the commissioner and any deed or other  
411 instrument executed pursuant to the authority hereby given shall be valid and effectual for all  
412 purposes to the same extent as though executed by the officers of the bank by authority of its  
413 board of directors. The compensation of employees, counsel, and other assistants, and all  
414 expenses incurred in connection with the liquidation of any such bank shall be fixed, subject to  
415 the approval of the commissioner, by the directors. The officers of the central bank and any other  
416 persons employed by the directors to liquidate the affairs of any member bank under this section  
417 shall give bond to the directors for the faithful performance of their duties in relation to such  
418 liquidation in such amount and with such surety or sureties as the commissioner may approve.  
419 The persons appointed for the purpose of liquidating the affairs of any such bank shall be subject  
420 to all the penalties to which agents appointed by the commissioner for the purpose of liquidating  
421 the affairs of a bank are now or may hereafter be subject. All accounts for which no claimant can  
422 be found after 6 years following the discontinuance of the business of any such bank shall, if no  
423 other provisions to care for said claim have been made, be turned over to the commissioner of  
424 revenue pursuant to the provisions of chapter 200A of the General Laws. Said accounts may be  
425 reclaimed in the manner provided in section 10 of said chapter but no interest shall be paid  
426 thereon for the time held by the commissioner.

427 SECTION 29. Section 6A of said chapter 73, inserted by section 5 of chapter 244 of the acts of  
428 1938, is hereby amended by striking out the word "corporation", each time it appears, and  
429 inserting in place thereof, in each instance, the following words:- central bank.

SECTION 30. Chapter 73 of the acts of 1934 is hereby further amended by striking out section 7, as most recently amended by chapter 92 of the acts of 1983, and inserting in place thereof the following section:-

Section 7. For the purpose of carrying out the provisions of this act, the central bank may exercise all the powers, rights and franchises of any bank the control, possession and operation of which has been taken over by it under this act, and may exercise all the powers and rights of the depositors of such bank relative to a merger or consolidation conferred upon them by section 24, 25, 26, 26A, 26B, and 26D of chapter 170 of the General Laws. Notwithstanding any other provision of law, (a) with the approval of the commissioner, any member bank may advance or loan upon, or purchase, the whole or any part of the assets of any other member bank which is in possession of the central bank under this chapter or which has been the subject of a notice from the commissioner to the central bank as provided in section 3A, at such valuations and upon such terms and conditions as such member banks, by authorization of their boards of directors, may agree upon, and the member bank making such an advance, loan or purchase, for the purpose of effecting the same, may assume and agree to pay the whole or any part of the share and other liabilities of such other member bank upon such terms and conditions and subject to such adjustments as may be approved by the commissioner, and (b), with the approval of the commissioner, any member bank may advance or loan upon, or purchase, the whole or any part of the assets acquired or held by the central bank, and may participate in such an advance, loan or purchase with one or more other member banks, at such valuations and upon such terms and conditions as the central bank and such member bank or banks, by authorization of their boards of directors, may agree upon, and with like approval, the central bank may do any and all things and may take any and all action which its directors may deem necessary or advisable to give

effect to this provision; provided that the approval of the commissioner shall not be required in the case of the purchase hereunder by a member bank from the central bank of any mortgage for a sum equal to the unpaid balance thereof. Upon the central bank taking possession of any member bank under this act, all rights and privileges of stockholders in such member bank shall terminate and each stockholder of any such member bank shall be entitled only to a pro rata portion of the surplus, if any, of the amount realized by the central bank upon the disposition of the assets of such member bank, over the total liabilities, including reserves for contingent liabilities, of such member bank. Upon the approval of the commissioner of the determination of such surplus, such determination shall become binding upon the central bank and the stockholders of such member bank.

SECTION 31. Chapter 73 of the acts of 1934 is hereby further amended by striking out section 8, as appearing in section 4 of chapter 179 of the acts of 1980, and inserting in place thereof the following section:-

Section 8. The directors of the central bank may make such rules and regulations, subject to the approval of the commissioner, as they may deem necessary in order to carry out the provisions of this act, and for such purposes the commissioner may confer and advise with the directors and may furnish them such information, records, statements and reports of examination or copies thereof, relating to any member bank, as the directors may request.

SECTION 32. Said chapter 73 is hereby further amended by striking out section 9, as most recently amended by section 25 of chapter 405 of the acts of 1985, and inserting in place thereof the following section:-

Section 9. The central bank, at a special meeting called for this purpose and held in accordance with the by-laws and with section 5 of said chapter 45, may determine, by four-fifths vote of all member banks, that, as a fact, the deposits of all member banks are adequately insured by a federal deposit insurance agency and that the Share Insurance Fund is no longer needed for the insurance of deposits of member banks. If the commissioner concurs with such determination of fact, he shall declare any balance of such fund, after payment of losses, expenses and obligations of the central bank, eligible for distribution to member banks upon any dissolution and liquidation of the fund. When voting for the purposes provided in this section, each such member bank, by a delegate authorized by its board of directors, shall have 1 vote. Upon any such vote to dissolve and liquidate the Share Insurance Fund, the central bank shall distribute, over a period of not more than 12 months, the amount of the fund so voted for distribution to the then member banks pro rata to the then member banks based upon their total amounts of assessments paid into said fund.

SECTION 33. Chapter 73 of the acts of 1934 is hereby further amended by striking out section 10, as most recently amended by section 93 of chapter 371 of the acts of 1983, and inserting in place thereof the following section:-

Section 10. During such time as the Share Insurance Fund is insuring the deposits in any member bank under the provisions of this act, sections 22 to 36, inclusive, of chapter 167 of the General Laws shall not, except as herein provided, apply to such member bank.

SECTION 34. Section 11 of said chapter 73 of the acts of 1934 is hereby repealed.

SECTION 35. Section 12 of said chapter 73 of the acts of 1934 is hereby repealed.

SECTION 36. Section 14 of said chapter 73 of the acts of 1934 is hereby repealed.

SECTION 37. Chapter 73 of the acts of 1934 is hereby further amended by striking out section 16, as appearing in section 31 of chapter 405 of the acts of 1985, and inserting in place thereof the following section:-

Section 16. The portions of the deposits of all member banks which shall have become members of a federal deposit insurance agency, the amount covered by the insurance of the federal deposit insurance agency, hereinafter referred to as excess deposits, shall continue to be insured in full by the Share Insurance Fund, hereinafter referred to as excess insurance, subject to the following conditions and limitations:

(a) The board of directors may require each member bank to pay to the Share Insurance Fund an annual excess deposit insurance assessment on July 1 of a year computed upon such member bank's excess deposits as of the preceding June 30, or such other date as shall be fixed by the directors and approved by the commissioner, as shown by a statement filed with the central bank and attested to by an authorized officer of such bank. The annual excess deposit insurance assessment, if any, for any year may be established as a single, uniform rate for all member banks or as a schedule of differing rates to be assessed on the basis of risk classifications established by the central bank and assigned to member banks. Any such risk based classifications, assessments and assignments shall become effective upon the approval thereof by the commissioner. The criteria for such classifications of risk may include, but need not be limited to, the following: the bank's so-called CAMELS rating; foreign country activity; types of deposit accounts held; amount of excess deposits held; level of capital; balance sheet composition; diversification and quality of loan and investment portfolios; level, severity and



trend of classified assets; level, trend and stability of earnings; ability to meet liquidity needs; compliance with law, regulations and regulatory and supervisory actions and classifications; and such other factors as, in the opinion of the directors and the commissioner, are deemed necessary, including a classification of greater than normal loss exposure risk.

Whenever the central bank, by a two-thirds vote of the full membership of its board of directors, determines that a member bank constitutes a greater than normal loss exposure risk to the Share Insurance Fund, it shall inform the commissioner of such determination and the basis therefor. If the commissioner concurs in such determination, the directors may require such member bank to do any one or more of the following: (i) pay an additional, non-refundable excess deposit insurance risk assessment; (ii) pay a capital contribution which shall be retained as additional capital; (iii) provide collateral acceptable to the directors to minimize any loss which might be incurred; (iv) secure reinsurance, naming the Share Insurance Fund as loss payee, in such form and amount and issued by such reinsurers as the directors shall deem acceptable or, in lieu thereof, to reimburse the Share Insurance Fund for the cost of its acquisition of such reinsurance; (v) reduce the amount of excess deposits held by such member bank in such amount and in such time period as the directors shall prescribe; or (vi) take such other actions as the directors deem appropriate. The amount, terms and conditions of any such required actions shall become effective when approved by the commissioner.

Whenever a member bank has been determined to constitute a greater than normal loss exposure risk to the Share Insurance Fund, the directors shall notify such bank in writing thereof, including an explanation of the basis for said determination, and advise said bank of any of the requirements imposed pursuant to the preceding paragraph. In any such event, said member bank shall have to option (a) of complying therewith within 60 days following such written

notification, or (b) notifying the central bank of its intention to withdraw from membership therein. Upon such notification of intent to withdraw, such bank shall, if state-chartered, convert to a state-chartered trust company charter in the manner hereinafter prescribed. Upon said conversion, such bank shall be referred to as a former member bank, and its membership and excess deposit insurance coverage shall cease on a date set by the directors, with the approval of the commissioner, subject to the following conditions: (1) each insured excess deposit in such bank on the date of cessation of insurance coverage, other than a term deposit, shall continue to be insured for 1 year after said date; and (2) each term deposit in said bank on said date shall continue to be insured until maturity; provided, however, that such bank shall be liable to the central bank for the cost of such coverage during said time periods at the assessed rate approved by the commissioner; and provided, further, that with the approval of the commissioner, the central bank may make arrangements with the holders of term deposits for an early withdrawal of such term deposits without penalty; and (3) said bank shall give written notice to its depositors of the cessation of its excess insurance coverage in such manner as the commissioner shall prescribe.

Upon any such withdrawal from membership, a former member bank shall not retain, succeed to or acquire any rights with respect to the assets of the central bank, except as otherwise provided herein. All amounts paid by the withdrawing bank pursuant to section 1 and paragraph (a) and all amounts paid by such bank pursuant to section 6 of chapter 45 of the acts of 1932 shall be retained by the central bank as a charge for the insurance of such bank's deposits and for the availability of liquidity assistance while it was a member bank; provided, however, that such bank shall participate in any distribution made under the provisions of section 9, and may, with

the approval of the commissioner, receive dividends on such retained assessments and deposits declared pursuant to section 5 of said chapter 45.

(b) During the time that such member bank is a member of a federal deposit insurance agency, it shall not be liable for any assessments to the Share Insurance Fund except as provided in paragraph (a).

(c) Notwithstanding the provisions of section 10 of this act, sections 22 to 36, inclusive, of chapter 167 of the General Laws shall apply to a member bank so long as it is a member of and its deposits are insured in whole or in part in a federal deposit insurance agency.

(d) Upon payment by the Share Insurance Fund of all or any part of the portion of any deposit insured by the fund in any member bank, the fund shall be subrogated to the rights of the person to whom such insurance was so paid to receive the same distribution from the proceeds of assets and claims of such bank as would have been payable to him on a claim for the portion of his deposit so paid by the Share Insurance Fund, but he shall retain his right to receive distribution of so much of his claim against said assets to which he may be entitled after reimbursement pro rata of the claims for subrogation to the Share Insurance Fund as provided in this paragraph and to a federal deposit insurance agency as provided in section 6 of chapter 167F of the General Laws.

(e) Notwithstanding any other provisions hereof, if the federal deposit insurance agency is at any time a depositor, either directly or through any other governmental agency, in any member bank which is a member of a federal deposit insurance agency, the amounts deposited, directly or indirectly, by the federal deposit insurance agency shall not be deemed insured to any extent by the Share Insurance Fund.

585     SECTION 38. The establishment of said risk classifications, the assignment thereof to member  
586     banks and the notice of any additional actions to be taken pursuant to section 37, shall be  
587     completed and effective not later than 90 days after the effective date of this act.